Form No. 5 Format Rev. (4-98) Village of	WILLIAMSON LAW BOOK COMPANY • VICTOR, NY 14564 Blection District
ABSENTEE BALLOT APPLICATION	I - VILLAGE ELECTION
☐ Due to Military Service (Sec. 15-120) ☐ Due to Duties, Occupation, Business, Studies ☐ Due to Illness or Physical Disability (Sec. 15- ☐ Due to Permanent Illness or Permanent Disability (SEE REVERSE SIDE FOR INSTRI	122) pility (Sec. 15-122) By Kand
To the Clerk of the Village of	7/0(3
Susan R Mortan, an (Print or Type Name)	applicant for an absentee ballot, states as follows:
I reside at	, and I am a qualified voter of the Village of
(Street, Number, Name of Post Office & Zip Code)	tion District, County of west has te
I KNOW OF NO REASON WHY I AM NO LONGER	•
MILITARY SERVICE, DUTIES, OCCUPATION, BUSI	
I expect in good faith to be absent from the County of	
general or special village election on March, 15, 20,05 military service or vacation require me to be elsewhere, as follows: 1. Explain briefly your position and nature of duties, occupation, studies, r lf absence is based on vacation, so state and give dates when you exp	because my duties, occupation, business, studies,
2. Place or places where you expect to be on military service, business, s	
2. Place or places where you expect to be on military service, business, s	studies or on vacation. Cold Spring
3. Name of employer, if any(If Self Employed or Unemployed	so state - If Student nive Name of School)
4. Address of employer	
5. If this application is based by reason of accompanying your spouse, c	·
if a qualified voter, be entitled to apply for the right to vote by absentee	ballot?, (Yes or No)
(Name of such Spouse, Child or Parent) 6. If this application is based by reason of being or expecting to be an inm of hospital.	(Relationship to You) nate of a veteran's hospital, give name and address
7. If application is based on confinement pending trial in a criminal process than a felony, give particulars:	eeding or for conviction of a crime or offense other
DUE TO ULA NECC OD DUVCICAL	DICADILITY
DUE TO ILLNESS OR PHYSICAL I certify that I have been advised by my medical practitioner or Christian Scie	
(Name and Address of Medical Practitioner or Christian State I will be unable to appear personally at the polling place of the on the day of the next general or special village election because of my □ at Home, in a □ Hospital. If hospital confinement is expected, state nam	election district in which I am a qualified voter Illness Physical Disability and will be confined
(Name of Hospital) DUE TO PERMANENT ILLNESS OR PERI I hereby certify that such illness or disability is permanent and request that tions without my making further application. The nature of my permanent illness.	at Absentee Ballots be mailed to me for future elec-
ALL APPLICANTS MUST FILL OU	IT FOLLOWING
If application is approved, I request ballot be delivered personally to me or to as my agent, or mailed to me at the following address:	
(Print or Type) APPLICANT MUST SIGN B I CERTIFY THAT THE INFORMATION IN THIS APPLICATION IS TRUE AND CORRECT BE ACCEPTED FOR ALL PURPOSES AS THE EQUIVALENT OF AN AFFIDAVIT AIS SHALL SUBJECT ME TO THE SAME PENALTIES AS IF I HAD BEEN DULY SWORI	CT AND UNDERSTAND THAT THIS APPLICATION WILL ND IF IT CONTAINS A MATERIAL FALSE STATEMENT,
Date 3/8/05 Signature of	
(If applicant is unable to sign application because of illness or physical disability, the folk nessed hereunder, I hereby state that I am unable to sign my application for an absent by reason of my illiteracy, illness or physical disability. I have made, or have received a	ee ballot without assistance because I am unable to write
Date Name of Vot I, the undersigned, hereby certify that the above named voter affixed his mark to this ap	
who affixed his mark to said application and understand that this statement will be acce if it contains a material false statement, shall subject me to the same penalties as if I have	epted for all purposes as the equivalent of an affidavit and

(Signature of Witness to Mark)

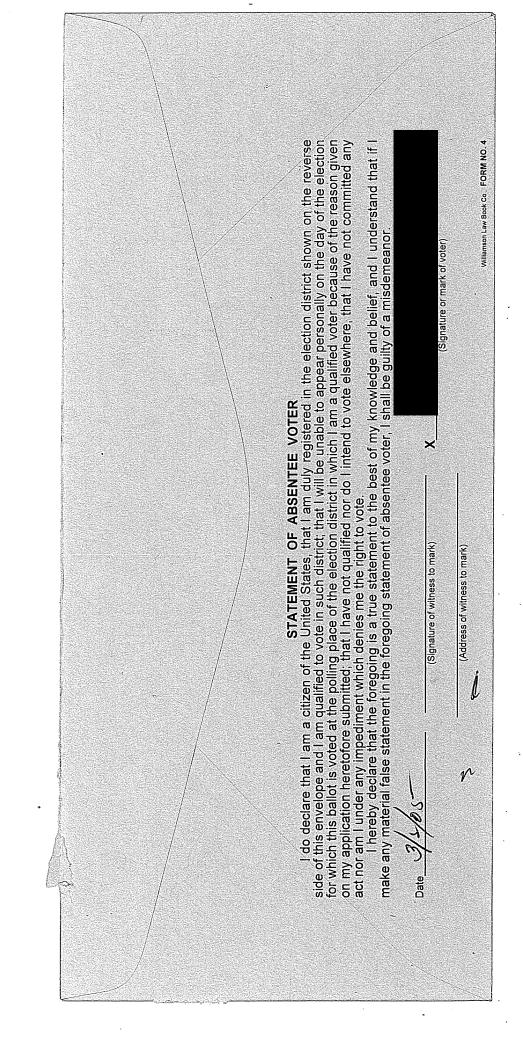
(Address of Witness to Mark)

INSTRUCTIONS TO ABSENTEE VOTERS

- 1. All qualified Voters must fill out in full the Statement on the front side of this form and personally sign it (unless physically unable to do so).
- 2. Applications must be received by the Village Clerk not earlier than 4 months and not later than the 7th day before the election, if the ballot is to be mailed, and not later than one day before the election if the applicant is going to have the absentee ballot hand delivered to him.
- 3. Unless you have applied for an absentee ballot as a permanently disabled person, this application is good only for the special or general village election to which it specifically pertains. You must, unless permanently disabled, renew your application for each special or general election if you are still eligible to vote absentee.
- 4. An application must be received by the Village Clerk no earlier than four months before the election for which an absentee ballot is sought. If the application requests that the absentee ballot be mailed, such application must be received not later than SEVEN days before the election. If the applicant or his agent delivers the application to the Village Clerk in person, such application must be received not later than the day before the election.

OFFICIAL ABSENTEE BALLOT 3/15/05 Date of Village Election Name of Voter Residence Village of_ 8AR / 2 2005 Village Election District Democratic Inspector Republican Inspector N. MY. (Inspectors must check and mark voter's registration record and initial in boxes above. Where bi-partisan inspectors are not required, any two inspectors may initial.) After marking ballots, fold and enclose them in this envelope, and seal it. Sign and fill out statement on back thereof. The Village Clerk must receive same not later than the close of the polls on Election Day. **85 MAIN STREET** RVINGTON, NEW YORK 10533 VILLAGE OF IRVINGTON VILLAGE CLERK should be firt 9

PLACE STAMP HERE



INSTRUCCIONES

- 1. Marque con lapicero azul o negro o con lapiz carbon.
- Para votar por el candidato marque con una aspa (x) o ponga un visto bueno (✓) en el cuadrado (□) que esta arriba del nombre del candidato.
- Para votar por una persona cuyo nombre no figura en la boleta Ud. debe escribir el nombre en el espacio en blanco que se encuentra al final de la columna del titulo de oficina correspondiente.
- 4. Si Ud. esta en el Condado de Westchester el Dia de las Elecciones Ud. debera votar en persona en su respectivo local para votar y arisar Al pueblo de Irvington para que no tome en cuenta su balota para ausentes.
- La Balota para Ausentes sera recibida por el Representante Oficial el 15 de Marzo, 2005.

INSTRUCTIONS

- Mark in pen having blue or black ink or with pencil having black lead.
- To vote for a candidate whose name IS printed on this ballot make a single cross (x) mark or a single check (J) mark in the voting square (□) above the name of the candidate.
- To vote for a person whose name is NOT printed on this ballot write name in the blank space at the bottom of the column under which the title of the office appears.
- If you are in Westchester County on Election Day you MUST VOTE IN PERSON at your local polling place and advise the Village to disregard your absentee ballot.
- Absentee Official Ballot to be received by Village Clerk on or before March 15, 2005.

MAYOR AND TWO TRUSTEES

MAYOR (Two Years) (Vote for One) (Dos Anos) (Vote por Uno)	TRUSTEES (Two Years) (Vote for Any Two) (Dos Anos) (Vote por cualquiera de Dos)				
1 A Republican Dennis P. FLOOD	2 A Republican Isabel B. MILANO	3 A Republican David A. KLASSEN			
1 B Democratic Erin MALLOY	2 B Democratic Nicola CODDINGTON				
1 C Good Government Party Dennis P. FLOOD	2 C Good Government Party Isabel B. MILANO	3 C Good Government Party David A. KLASSEN			
1 D Irvington Village Party Erin MALLOY	2 D Invington Village Party Nicola CODDINGTON				
MAYOR	TRUSTEE	TRUSTEE			

OFFICIAL ABSENTEE BALLOT

Name of Voter Susa B mo As

Residence (residence address, also post office address if not identical)

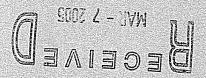
Village of Yving to Democratic Inspector Republican Inspector (Inspectors must check and mark voter's registration record and initial in boxes above. Where bi-partisan inspectors are not required, any two

VILLAGE CLERK
VILLAGE OF IRVINGTON
85 MAIN STREET
IRVINGTON, NEW YORK 10533

inspectors may initial.)

After marking ballots, fold and enclose them in this envelope, and seal it. Sign and fill out statement on back thereof. The Village Clerk must receive same not later than the close of the polls on Election Day.

VILLAGE OF IRVINGTON, N.Y.



PLACE STAMP HERE

I do declare that I am a citizen of the United States, that I am duly registered in the election district shown on the reverse side of this envelope and I am qualified to vote in such district; that I will be unable to appear personally on the day of the election for which this ballot is voted at the polling place of the election district in which I am a qualified voter because of the reason given on my application heretofore submitted; that I have not qualified nor do I intend to vote elsewhere, that I have not committed any act nor am I under any impediment which denies me the right to vote.

I hereby declare that the foregoing is a true statement to the best of my knowledge and belief, and I understand that if I make any material false statement in the foregoing statement of absentee voter, I shall be guilty of a misdemeanor. Williamson Law Book Co., FORM NO. 4 STATEMENT OF ABSENTEE VOTER (Signature of witness to mark) (Address of witness to mark)

INSTRUCCIONES

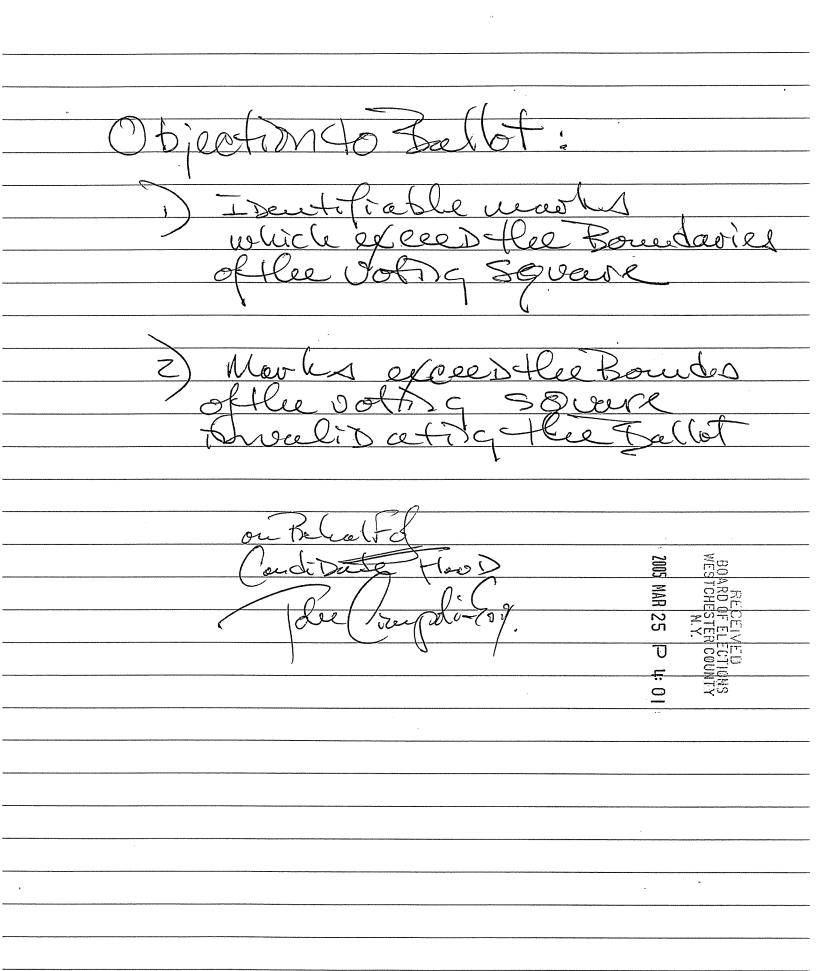
- 1. Marque con lapicero azul o negro o con lapiz carbon.
- Para votar por el candidato marque con una aspa (x) o ponga un visto bueno (✓) en el cuadrado (□) que esta arriba del nombre del candidato.
- Para votar por una persona cuyo nombre no figura en la boleta Ud. debe escribir el nombre en el espacio en blanco que se encuentra al final de la columna del titulo de oficina correspondiente.
- 4. Si Ud. esta en el Condado de Westchester el Dia de las Elecciones Ud. debera votar en persona en su respectivo local para votar y arisar Al pueblo de Irvington para que no tome en cuenta su balota para ausentes.
- La Balota para Ausentes sera recibida por el Representante Oficial el 15 de Marzo, 2005.

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MAYOR AND TWO TRUSTEES

MAYOR (Two Years) (Vote for One) (Dos Anos) (Vote por Uno)	TRUSTEES (Two Years) (Vote for Any Two) (Dos Anos) (Vote por cualquiera de Dos)				
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1 B Democratic Erin MALLOY	2 B Democratic Nicola CODDINGTON				
1 C Good Government Party Dennis P. FLOOD	2 C Good Government Party Isabel B. MILANO	3 C Good Government Party David A. KLASSEN			
1 D Irvington Village Party Erin MALLOY	2 D Irvington Village Party Nicola CODDINGTON				
MAYOR	TRUSTEE	TRUSTEE			





50 Main Street White Plains, NY 10806 914.421.4100

Fax: 914.421.4160 www.tpwlaw.com

MARCH 18, 2005

MESSAGE TO:

Name:

Company:

Phone:

Facsimile:

Location:

Larry Schopfer

591-4072

MESSAGE FROM:

Name:

Kevin J. Plunkett, Esq.

Telephone:

Fax Number:

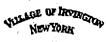
Total number of pages sent (including this cover sheet): 4

If You Did Not Receive The Number Of Pages Shown Above, Or If Any Copies Are Illegible,
Please Call Patricia E. Leavy At: (914) 421-4153

MESSAGE:

Please see the attached letter.

The information contained in this facsimile message is intended for the use of the individual or entity named above. If the reader of this message is not the intended recipient or is the employee or agent responsible for delivering it to the intended recipient, the reader is hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this message in error, please notify us by telephone immediately and return the original message to us at the above address via the U.S. Postal Service. Thank you.





DENNIS P. FLOOD

MAYOR

TRUSTÉES

DAVID A. KLASSEN ISABRI, B. MILANO RICHARD J. LIVINGSTON
JONATHAN A SIGUEL

DONALD P. MARRA
VILLAGE ADMINISTRATOR

LAWRENCE S. SCHOFFER
VILLAGE CLERK-TREASURER

Kevin J. Plunkett, Esq. VILLAGE ATTORNEY

March 18, 2005

VIA FACSIMILE

Mr. Larry Schopfer Clerk/Treasurer Village of Irvington 85 Main Street Irvington, NY 10533

RE: Registered Voter - Absentee Ballot

Dear Larry:

This afternoon you have asked my opinion, as Village Attorney, on the issue of whether an absentee ballot of a registered voter that was delivered to the wrong election district as a result of an administrative error by the Office of the Village Clerk, which ballot was returned to the Clerk unopened by the Chair of the Board of Inspectors of the wrong election district on the night of the election (March 15, 2005), should be opened and counted by you, as the Village Clerk.

You advised me that due to the closeness of the election result for the position of Mayor that all absentee ballots, including the ballot delivered to the wrong election district, were placed in a safe place until the count this morning by the Westchester County Board of Elections.

Based on my review of N.Y. Election Law § 15-120 (7) and (8), it is my opinion that that the absentee ballot should <u>not</u> be opened and counted unless both candidates consent in writing to said opening or unless either candidate obtains a court order to so open and count.

Accordingly, I recommend that you inform both candidates, in writing, of the existence of this absentee ballot and the circumstances surrounding the ballot. Then the candidates can either consent to the ballot being opened and counted or proceed with legal action if so desired. In that regard, I attach a draft letter to be sent by you to each candidate.

Under all circumstances, the anonymity of the voter whose name appears on this absentee ballot should be preserved. This anonymity cannot be compromised. Until the matter is resolved, I recommend that you not release the names of any absentee voters or any documents related thereto, and reserve the right to deny access to such information if not permitted by law.

Very truly yours.

Kevin J. Plunkett Village Attorney

KJP/pl Attachment

DRAFT LETTER TO CANDIDATES

Dear Candidates:

Re: Registered Voter - Absentee Ballot

I have spoken with the Village Attorney this afternoon and have sought his guidance as how to proceed with an unopened absentee ballot of a registered voter.

The absentee ballot in question was delivered to the wrong election district as a result of an administrative error by the Office of the Village Clerk. The absentee ballot is from a registered voter in the Village. The ballot was returned to me unopened by the Chair of the Board of Inspectors of the wrong district on the night of the election (March 15, 2005). The ballot has been placed in a safe place together with all other absentee ballots since election night.

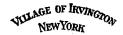
I have been advised by the Village Attorney that the absentee ballot should <u>not</u> be opened and counted at this time without the consent, in writing, of the two mayoral candidates or a court order. Accordingly, I am notifying both of you of the existence of this absentee ballot.

If you consent to me opening and counting the absentee ballot of this registered voter, please inform me in writing immediately. If only one candidate consents then I will not open and count the ballot without a court order.

The anonymity of the voter whose name appears on this absentee ballot will not be disclosed and cannot be compromised. Until this matter is resolved, I will not be releasing the names of any absentee voters or any documents related thereto and reserve the right to deny access to such information, if not permitted by law.

Very truly yours,

Larry Schopfer





DENNIS P. FLOOD

MAYOR

TRUSTEES

DAVID A. KLASSEN ISABEL B. MILANO RICHARD J. LIVINGSTON
JONATHAN A. SIEGEL

Donald P. Marra
VILLAGE ADMINISTRATOR

LAWRENCE S. SCHOPFER VILLAGE CLERK-TREASURER

Kevin J. Plunkett, Esq. VILLAGE ATTORNEY

March 18, 2005

F-10-0 21.8

Erin Malloy 35 Riverview Road Irvington, NY 10533

Re:

Registered Voter - Absentee Ballot

Dear Ms. Malloy:

I have spoken with the Village Attorney this afternoon and have sought his guidance as how to proceed with an unopened absentee ballot of a registered voter.

The absentee ballot in question was delivered to the wrong election district as a result of an administrative error by the Office of the Village Clerk. The absentee ballot is from a registered voter in the Village. The ballot was returned to me unopened by the Chair of the Board of Inspectors of the wrong district on the night of the election (March 15, 2005). The ballot has been placed in a safe place together with all other absentee ballots since election night.

I have been advised by the Village Attorney that the absentee ballot should <u>not</u> be opened and counted at this time without the consent, in writing, of the two mayoral candidates or a court order. Accordingly, I am notifying both of you of the existence of this absentee ballot.

If you consent to me opening and counting the absentee ballot of this registered voter, please inform me in writing immediately. If only one candidate consents then I will not open and count the ballot without a court order.

The anonymity of the voter whose name appears on this absentee ballot will not be disclosed and cannot be compromised. Until this matter is resolved, I will not be releasing the names of any absentee voters or any documents related thereto and reserve the right to deny access to such information, if not permitted by law.

Very truly yours,

Lawrence S. Schopfer

Clerk-Treasurer





INCORPORATED 1872

DENNIS P. FLOOD MAYOR

TRUSTEES

DAVID A. KLASSEN ISABEL B. MILANO RICHARD J. LIVINGSTON JONATHAN A. SIEGEL

DONALD P. MARRA VILLAGE ADMINISTRATOR

LAWRENCE S. SCHOPFER VILLAGE CLERK-TREASURER

> KEVIN J. PLUNKETT, Esq. VILLAGE ATTORNEY

March 18, 2005

Faxed to office 3/18/05 Delivered by hund 3/18/05

Dennis P. Flood 4 Meadowbrook Road Irvington, NY 10533

Registered Voter - Absentee Ballot

Dear Mr. Flood:

I have spoken with the Village Attorney this afternoon and have sought his guidance as how to proceed with an unopened absentee ballot of a registered voter.

The absentee ballot in question was delivered to the wrong election district as a result of an administrative error by the Office of the Village Clerk. The absentee ballot is from a registered voter in The ballot was returned to me unopened by the Chair of the Board of Inspectors of the wrong district on the night of the election (March 15, 2005). The ballot has been placed in a safe place together with all other absentee ballots since election night.

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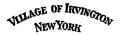
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Very truly yours,

Lawrence S. Schopfer

Clerk-Treasurer





DENNIS P. FLOOD MAYOR

TRUSTEES

DAVID A. KLASSEN ISABEL B. MILANO

RICHARD J. LIVINGSTON JONATHAN A. SIEGEL

DONALD P. MARRA VILLAGE ADMINISTRATOR

LAWRENCE S. SCHOPFER VILLAGE CLERK-TREASURER

KEVIN J. PLUNKETT, Esq. VILLAGE ATTORNEY

VILLAGE OF IRVINGTON, N.Y.

Dennis P. Flood 4 Meadowbrook Road Irvington, NY 10533

Re:

Registered Voter - Absentee Ballot

Dear Mr. Flood:

I have spoken with the Village Attorney this afternoon and have sought his guidance as how to proceed with an unopened absentee ballot of a registered voter.

March 18, 2005

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I have been advised by the Village Attorney that the absentee ballot should not be opened and counted at this time without the consent, in writing, of the two mayoral candidates or a court order. Accordingly, I am notifying both of you of the existence of this absentee ballot.

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The anonymity of the voter whose name appears on this absentee ballot will not be disclosed and cannot be compromised. Until this matter is resolved, I will not be releasing the names of any absentee voters or any documents related thereto and reserve the right to deny access to such information, if not permitted by law.

dagree to you opening and counter the absentee balloby the registered voter. De G. Alexa

Very truly yours,

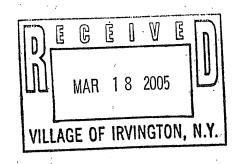
Lawrence S. Schopfer

Clerk-Treasurer

Erin Malloy 35 Riverview Road Irvington, New York 10533

March 18, 2005

Mr. Larry Schopfer Clerk-Treasurer Village of Irvington 85 Main Street Irvington, New York 10533



Dear, Mr. Schopfer:

I am in receipt of your letter regarding the one absentee vote that had been mistakenly delivered to the wrong election district. In the spirit that all votes must be fairly recorded, I, of course, agree that this ballot should be counted, despite the risks to my current standing,

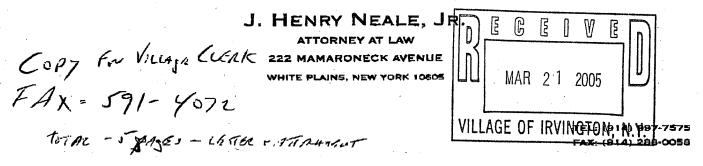
There was another absentee ballot that was not opened and counted, and we have concerns that this ballot, too, should be included in the vote. The voter applied for and received an absentee ballot; therefore, we reserve all rights related to that ballot.

I appreciate and applaud your commitment to the anonymity of the electorate, and agree that it should not be violated. I am sure that you join me in my wish for an honest and prompt resolution of this process.

Sincerely,

Erin Malloy

Cc: Henry Neale Paula Etzel



By Hand

March 21, 2005

To: Hon. Reginald A. LaFayette

Hon. Carolee C. Sunderland, Commissioners

Hon. Melissa J. Nacerino

Hon. Jeannie L. Palazola, Deputy-Commissioners

Westchester County Board of Elections 25 Quaroppas Street White Plains, New York 10601

I represent Erin Malloy, a candidate for Mayor of the Village of Irvington in the election held March 15, 2005. Her name was on the ballot on the Democratic (Row B) and Irvington Village (Row D) lines. After the polls closed and votes were tallied by the Election Inspectors the result stated on election night was:

Dennis P. Flood (Row A & C) - 845; Erin Malloy (Row B & D) - 844.

Ms. Malloy requested a recanvass, pursuant to Election Law 15-126(3). The recanvass was held on Friday, March 18, 2005. The count was made by Deputy Commissioners Nacerino and Palazola in accordance with standard and regular procedures of the Board of Election, as authorized by the Election Law. After their counting process was done the result announced by the Board of Elections officials was:

Dennis P. Flood (Row A & C) - 846; Erin Malloy (Row B & D) - 847;

with two sealed absentee ballots envelopes that had been received by the Village Clerk before the polls closed on Election Day, but were not opened on Election Night, still remaining unopened.

I am informed the Board of Elections has not yet made a written notification of the result of the recanvass, consequently, the election result has not yet been certified. However, in these circumstances, it appears clearly established that Ms. Malloy, who received more votes (847) than her opponent (846) as was announced upon completion of the recanvass, should be certified as the elected Mayor as quickly as the regular procedures of the Board of Elections would permit.

Alternatively, Erin Malloy requests that both of the two absentee ballots which remained unopened at the conclusion of the recanvass be examined by the Board of Elections and that a decision be made by the Board promptly as to whether either or both ballot envelopes should be opened and the votes counted.

In fact, one of those ballots which was still sealed and unopened when Deputy Commissioners Nacerino and Palazola departed from the Town of Greenburgh's voting machine storage facility after finishing their counting process shortly before noon on March 18, was opened by the Irvington Village Clerk-Treasurer. This was done after regular Village business hours ended on Friday, March 18. The reason is described by a letter sent from the Village Clerk to Ms. Malloy by FAX at 3:30 p.m. on Friday. A copy of the Clerk's letter asking her consent for the opening of one ballot is annexed to my letter for addition to the County Board's records.

Ms. Malloy did consent, while reserving rights related to the other ballot. This was consistent with her belief all votes of every eligible voter must be counted but was also influenced by the Clerk's representation that his proposal for opening one of the still sealed ballots was being made after consultation with the Village Attorney and relied on guidance by the Village Attorney.

Actually the Village Clerk (as well as all other Village officers) had no authority to take any action, make any decision or do anything related to unopened absentee ballots. Election Law, section 15-126, provides that after a Village Clerk has notified the Board of Elections a written request made by a candidate for village office has been received by the Clerk, which was done in this case before March 18, the "... board shall assume the duty of such recanvass and shall take all steps necessary and consistent with (the Election Law) to cause a recanvass of the vote". The same law states:

"The institution of a recanvass shall immediately stay any further action by, or on behalf of, the village clerk with regard to further election procedures required by this section". (Election Law 15-126(3))

In these circumstances, the action by the Village Clerk in opening one of the two sealed absentee ballots which was done at approximately 6:30 p.m. on March 18, was not authorized by law and any attempt to count such a ballot is, at this moment, both improper and invalid.

While repeating her previously stated belief that all votes of every eligible voter should be counted. Ms. Malloy defers to the Board of Election for a determination whether the ballot that was opened by the Village Clerk during the evening of March 18 should be counted.

-3-

However, Ms. Malloy has consistently reserved all of her rights (and inferentially the affected voter's rights) related to the second absentee ballot still remaining sealed and unopened after the counting by the Board of Elections of votes tallied by voting machines and of absentee ballots that were opened and put into the ballot boxes on Election Day.

I am informed the Village Clerk said on Election Day and repeated again on March 18 the last remaining ballot could not be opened because the voter who mailed or brought the sealed absentee ballot envelope to Village Hall is not actually registered to vote in the Village of Irvington. However, this determination made by the Clerk is not correct.

It might be noted that the voter could have obtained an absentee ballot and ballot envelope only by making an application for the ballot to the Village Clerk. Such a request would have been reviewed by the Clerk or the Deputy Clerk before the ballot was issued. If the Clerk or Deputy had questions about eligibility of the applicant to vote in this Village election, such questions should have been asked before the absentee ballot and envelope were provided.

In this particular case the voter is Susan Morton. She has resided at 3 Lewis Road in the Village of Irvington (E.D. 79) for more than seven years. She is registered to vote and, in fact, has voted frequently in general and village elections. Perhaps the records related to her voter registration, party enrollment, prior voting and the most recent application for an absentee ballot refer to her variously as "Susan Morton" or as "Susan Brenner Morton" or as "Susan Brenner-Morton"; but, any such very minor deviation is immaterial. She has remained the same person, living consistently at the same address and with the same right to vote and certainly she has a right to have her vote counted now.

Ms. Morton could not have learned before last Friday afternoon (3/18/05) that her right to vote was being challenged since her absentee ballot application was accepted without any question and she did not receive any subsequent notification her eligibility to vote in this election was being disputed. But, she knows about this now and is making a protest to the Village Clerk.

In all the facts of this situation the absentee ballot that has not yet been opened at the direction of the Village Clerk should be opened and this vote for Mayor and Trustees should be counted.

<u>Conclusion:</u> The County Board of Elections should notify the Village Clerk of the result of recanvass made on March 18, 2005: Flood - 846; Malloy - 847, with two absentee ballots still unopened;

-4-

Or, the County Board should determine whether the two unopened absentee ballots must be opened and counted; and,

If the County Board chooses to make such a decision, Erin Malloy would ask to be heard for the purpose of advocating that the facts and applicable law require both of the two remaining ballots to be opened and counted.

Please keep me informed of the Board's actions related to this election which has become subject to Election Law requirements for a recanvass.

Please let me know if the Board has any questions or wishes more information to be provided by me or by Ms. Malloy.

Thank you for your attention to this matter.

J. Henry Neale, Jr.

Copy by Fax to:
Lawrence S. Schopfer
Clerk-Treasurer
Village of Irvington

FROM : BLUM PETER AND RITA

TO OF THE PROPERTY.

FAX NO. : 914 5915269

Mar. 18 2005 03:29PM P1

Dinnit P. Floor Majak

TRUSTEES

DAVID A. KLASSEN ISARRI, B. MILANO EUGRURD J. LIVINGSTEN JONATHAN A. STEEL

Donald P. Marra Village administrator

LAWRENCE S. SCHETTEL VILLAGE CLERK-TREASURER

Ecvoi J. Plokkett, Bri. Village attorner

March 18, 2005

Erin Malloy 35 Riverview Road Irvington, NY 10533

Re Registered Voter - Absencee Ballot

Dost Ms. Malloy:

I have spoken with the Village Amorney this afternoon and have sought his guidance as how to proceed with an unopened absence ballot of a registered voter.

The absentee ballot in question was delivered to the wrong election district as a regult of an administrative error by the Office of the Village Clerk. The absence ballot is from a registered voter in the Village. The ballot was returned to me unopened by the Chair of the Board of Inspectors of the wrong district on the night of the election (March 15, 2005). The ballot has been placed in a safe place together with all other absence ballots since election night.

I have been advised by the Village Attorney that the absences ballot should not be opened and counted at this time without the consent, in writing, of the two mayoral candidates or a court order. Accordingly, I am notifying both of you of the existence of this absence ballot.

If you consent to me opening and counting the absence ballot of this registered voter, please inform me in writing immediately. If only one candidate consents then I will not open and count the ballot without a court order.

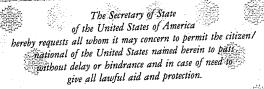
The anonymity of the voter whose name appears on this absentee ballot will not be disclosed and cannot be compromised. Until this matter is resolved, I will not be releasing the names of any absentee voters or any documents related thereto and reserve the right to deny access to such information, if not permitted by law.

Very muly yours.

Lawrence S. Schopler

Clerk-Tressurer

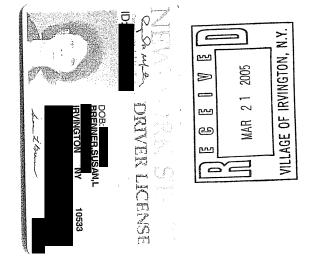
ES MAIN STRRET - INVINGTON, N.Y. 10533
THE EPHONE: (914) 591-7070 - FARL (914) 591-4072
E-MAIL: Office@in-ingloady.gov - Web Site: http://orin.ingloady.gov

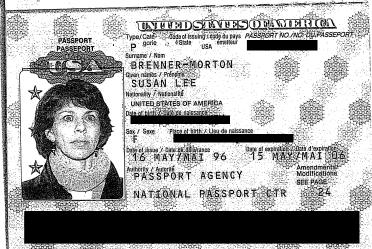


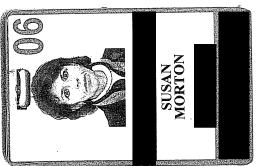
Le Secrétaire d'Etat
des Etats-Unis d'Amérique
prie par les présentes toutes autorités compétentes de laisser passer
le citoyen ou ressortissant des Etats-Unis titulaire du présent passeport,
sans délai ni difficulté et, en cas de besoin, de lui accorder
toute aide et protection légitimes.

Signature of Bearer/Signature du titulaire

NOT VALID UNTIL SIGNED



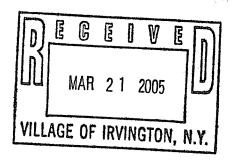




Susan Brenner Morton

Irvington, NY 10533 March 20, 2005.

Mr. Larry Schopher Village Clerk/Treasurer Village of Irvington Village Hall 85 Main Street Irvington, New York 10533



Subject: Absentee Ballot for March 2005 Village election

Dreme Pan

Dear Mr. Larry Schopher,

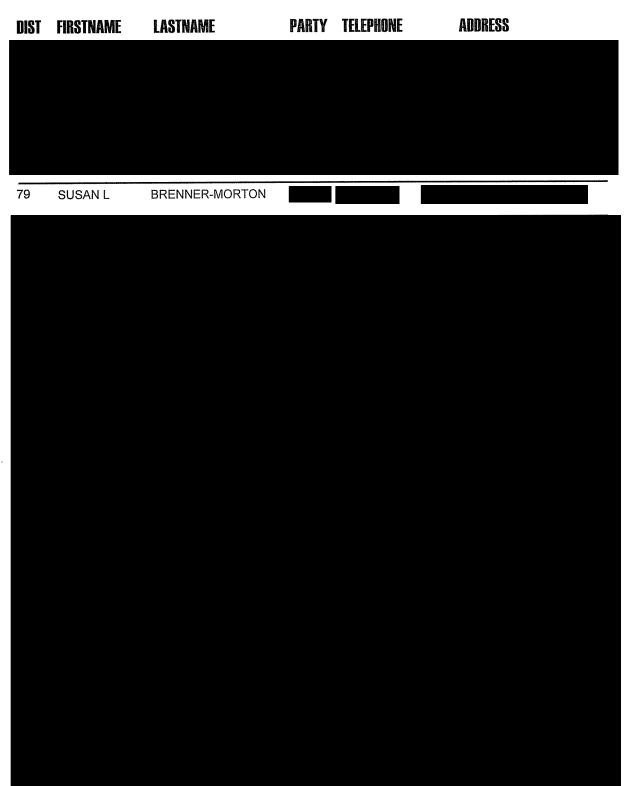
It has come to my attention that the absentee ballot I submitted the week of March 6, 2005 for the March 15, 2005 election of Irvington Mayor and Village Trustee(s), has not been counted because of some confusion as to the validity of my voter registration. I am a registered voter who resides at Irvington, NY 10533. The confusion may have been due to the fact that I am registered for government elections as Susan Brenner-Morton. For School board elections I am listed as Susan B. Morton. I often confuse the two when going to vote at the polls, but in that case they just direct me to the correct line. If you check the voter registration by street you can see that I am registered. I would like my vote to be counted.

Regards,

Susan B. Morton

Susan Brenner- Morton

Telephone Numbers Dems and Nons



March Trustee Election Register by Street

DISTRICT FIRSTNAME LASTNAME **PARTY** STREET ADDRESS NOTES

J. HENRY NEALE, JR.

ATTORNEY AT LAW
222 MAMARONECK AVENUE
WHITE PLAINS, NEW YORK 10603

TEL: (914) 997-7575 FAX: (914) 288-00\$8

By Fax: 591-4072 [Total: 2 pages]

March 21, 2004

Lawrence S. Schopfor Clerk-Treasurer Village of Tarrytown 85 Main Street Tarrytown, New York 10533

Dear Mr. Schopfor:

Susan Morton is a registered voter eligible to vote in the 2005 Village election.

A copy of the Certification of her registration made by the Board of Elections this morning is enclosed.

Very truly yours,

J. Henry Neale, Jr.

CAROLEE C. SUNDERLAND
Commissioner
Fax 914-995-3190
MELISSA J. NACERINO
Deputy Commissioner

25 Quarropas Street White Plains, NY 10601 914-995-5700 www.westchestergov.com/boe REGINALD A. LAFAYETTE
Commissioner
Fax 914-995-7753
JEANNIE L. PALAZOLA
Deputy Commissioner

Certification of Registration

We, the Commissioners of the Westchester County Board of Elections, do hereby certify that the following information is a true and correct copy of the voter registration record on file in this office for:

SUSAN L BRENNER-MORTON

Date of Registration: 04-05-1988

Serial Number:

C4 4

Status:

Address:

T/W/D:

Date of Birth:

Party:

04-03-1966

ACTIVE

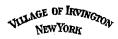
, IRVINGTON NY 10533

40079 Sex: F

Witness my hand and official seal at Westchester County, State of New York, on March 21,2005.

Commissioners of Elections
County of Westchester, State of New York

Commissioners





MAYOR TRUSTEES

DENNIS P. FLOOD

DAVID A. KLASSEN ISABEL B. MILANO

RICHARD J. LIVINGSTON JONATHAN A. SIEGEL

DONALD P. MARRA VILLAGE ADMINISTRATOR

LAWRENCE S. SCHOPFER VILLAGE CLERK-TREASURER

KEVIN J. PLUNKETT, Esq. VILLAGE ATTORNEY

VIA FAX AND MAIL

March 21, 2005

Reginald LaFayette, Commissioner Carolee Sunderland, Commissioner Westchester County Board of Elections 25 Quarropas Street White Plains, NY 10601

Request for Updated Re-canvass Village of Irvington Elections

Dear Commissioners LaFayette and Sunderland:

At the re-canvass conducted by your Board on March 18, 2005, an additional unopened absentee ballot was discovered. Subsequently, both candidates for Mayor consented in writing to the opening of this ballot (see attached letters). On Friday evening, March 18, 2005, I opened this ballot in front of numerous observers including the candidates.

As a result of this additional vote, I hereby request an updated re-canvassing of the votes cast in the Village Election held March 15, 2005.

Please advise me as to the date and time of re-canvass at your earliest convenience.

Sincerely.

Lawrence S. Schopfer

Clerk-Treasurer

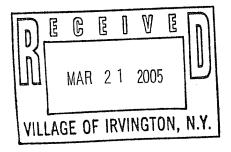
Encl.

Melissa J. Nacerino, Deputy Commissioner cc: Jeannie L. Palazola, Deputy Commissioner

Kevin J. Plunkett, Village Attorney

WESTCHESTER COUNTY BOARD OF ELECTIONS

-	F	ACSIMILE TRANSMIT	TAL SHEET	
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25 QUARROPAS STREET WHITE PLAINS, NEW YORK 10601 (914) 995-5700

CAROLEE C. SUNDERLAND

MELISSA J. NACERINO

Deputy Commissioner

Commissioner

Fax 914-995-3190



25 Quarropas Street White Plains, NY 10601 914-995-5700 www.westchestergov.com/boe REGINALD A. LAFAYETTE

Commissioner
Fax 914-995-7753

JEANNIE L. PALAZOLA

Deputy Commissioner

Mr. Lawrenece Schopfer Irvington Village Clerk 85 Main Street

Irvington, New York 10533

Dear Mr. Schofper:

March 21, 2005

MAR 2 1 2005

VILLAGE OF IRVINGTON, N.Y.

Attached please find the results of the re-canvass performed by this office on Friday, March 18, 2005 for the Irvington Village Election held on Tuesday, March 15, 2005.

The Westchester County Board of Elections performed a re-canvass of the Election Machines as well as the Absentee Ballots that were opened on Election Night.

At the conculsion of our re-canvass, there were two ballots that were segregated and unopened pending further research and a ruling by the Office of the Village Clerk.

The totals in the Mayoral race at the close of our recanvass were as follows:

Dennis Flood:

846

Erin Malloy:

847

If you should have any questions or require further assistance, please do not hesitate to contact us.

Sincerely,

JEANNIE L. PALAZOLA Deputy-Commissioner

MELISSA J. NACERINO Deputy-Commissioner

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	<u> </u>				I			





DENNIS P. FLOOD

MAYOR

TRUSTEES

DAVID A. KLASSEN ISABEL B. MILANO

RICHARD J. LIVINGSTON
JONATHAN A. SIEGEL

Donald P. Marra

VILLAGE ADMINISTRATOR

LAWRENCE S. SCHOPFER VILLAGE CLERK-TREASURER

Kevin J. Plunkett, Esq. VILLAGE ATTORNEY

VIA FAX

March 21, 2005

Reginald LaFayette, Commissioner Carolee Sunderland, Commissioner Westchester County Board of Elections 25 Quarropas Street White Plains, NY 10601

Re: Cancellation of re-canvass request

Dear Commissioners LaFayette and Sunderland:

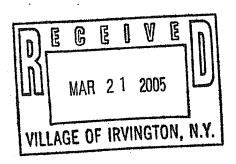
This evening I was served with a lawsuit and an order from a Judge to take no further actions with respect to the certification of the results from the March 15, 2005 election. Your Board was also named in this action.

Although earlier today I had requested an updated re-canvass of the Village election results, I am now requesting that this re-canvass not be performed until such time as the courts permit it.

If you have any questions, please contact me at (914) 591-8604.

Sincerely,

Lawrence S. Schopfer Clerk-Treasurer



914-285-4184

At the Supreme Court of the State of New York, held in and for the County of Westchester, at 111 Dr. Martin Luther King Jr. Blvd., White Plains, New York, on the 2/86 day of March, 2005.

PRESENT:

HON.

Justice

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF WESTCHESTER

In the Matter of the Application of the Honorable DENNIS P. FLOOD, individually, and as Mayor, and as candidate for Mayor of the Village of Irvington,

Petitioner.

-against-

LAWRENCE SCHOPFER, in his capacity as Village Clerk of the Village of Irvington, CAROLEE SUNDERLAND and REGINALD LAFAYETTE, as Commissioners of the WESTCHESETER COUNTY BOARD OF ELECTIONS, ERIN MALLOY, as candidate for Mayor for the Village of Irvington, and THE BOARD OF TRUSTEES OF THE VILLAGE OF IRVINGTON,

Respondents.

MAR 2 1 2005

CHIEF CLERK
NO COUNTY SUPPEND

Index No. 05/04105

ORDER TO SHOW CAUSE

Upon the attached Verified Petition dated March 21, 2005;

LET the Respondents show cause before the Supreme Court of the State of New York, County of Westchester at the Courthouse located at 111 Dr. Martin Luther King Jr. Blvd White Plains, New York, on the Logical day of March, 2005 at 9.30 a.m. or as soon thereafter as counsel may be heard, why an order should not be made and entered herein pursuant to Section 15 of the Election Law:

- 1) Ordering that voter signature ledgers/books, poll worker lists, absentee ballot envelopes, absentee ballot lists, absentee ballot applications, the absentee ballots themselves, affidavit ballots, if any, write-in ballots, if any, and any other list or document showing the votes cast on Election Day and qualification of voters, be secured made available for inspection and copying to the petitioner, the Mayoral candidate Erin Malloy, and the Court; and
- 2) Staying the certification of the Election Day results as it pertains to the position of Mayor or any action relating thereto by the Village Clerk of the Village of Irvington, and Westchester County Board of Elections pending a determination of this proceeding;
- 3) Enjoining the Board of Trustees of the Village of Irvington from determining by lot the position of Mayor; and
- 4) Ordering that a run-off election be conducted for the position of Mayor in the Village of Irvington, New York due to various instances of voting irregularity and possible fraud on March 15, 2005 ("Election Day"); and

granting such other, further or different relief as this Court deems just and proper.

Pending the hearing of the petitioner's request for relief, IT IS HEREBY ORDERED that the certification of the Election Day results as it pertains to the position of Mayor or any

914-285-4184

action relating thereto by the Village Clerk of the Village of Irvington, and Westchester County Board of Elections is stayed pending a determination of this proceeding; and

AND IT IS FURTHER HEREBY ORDERED that the Board of Trustees of the Village of Irvington are hereby enjoined from determining by lot the position of Mayor; and

AND IT IS FURTHER HEREBY ORDERED that the voter signature ledgers, poll worker lists, absentee ballot envelopes, absentee ballot lists, absentee ballot applications, absentee ballots themselves, affidavit ballots, if any, write-in votes, if any, and any other lists or documents showing the votes cast on Election Day and qualification of voters be made available for inspection and copying by petitioner, the other candidate for Mayor

AND IT IS FURTHER HEREBY ORDERED that, sufficient cause therefore appearing, let service of a copy of this order and the papers in support upon Respondents as follows: 1) by personal delivery of this order and the papers upon which it was granted to any of the above captioned respondents, or by personal delivery to any person authorized to accept service on behalf of such respondent, or 2) at the option of the petitioner, hy affixing a true copy of the within order and the papers upon which it was granted upon any of the above captioned respondent at their residence as specified in Board of Elections records or their business address as may be appropriate, and by enclosing a copy of same in a sealed post paid wrapper via EXPRESS MAIL SERVICE, and depositing same with a depository of the United States Postal-Service, or 3) at the option of the Petitioner by any other method of substituted service which is in accordance with the Civil Practice Law and Rules, service as provided for herein-shall be made on or before the 23 rd day of March, 2005, and such service shall be deemed good and sufficient service thereof.

AND IT IS FURTHER HEREBY ORDERED that the Respondents shall serve their

answering papers, if any, by personal delivery upon Petitioners' counsel at least

to the return date.

Dated: White Plains, New York March 11, 2005

914-285-4184

ENTER

Judge in the absence of The Hon. Joan Lefkowitz

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF WESTCHESTER

In the Matter of the Application of the Honorable DENNIS P. FLOOD, individually, and as Mayor, and as candidate for Mayor of the Village of Irvington, Index No. 05 04 105 Petitioner, -against-PETITION . LAWRENCE SCHOPFER, in his capacity as Village Clerk of the Village of Irvington, CAROLEE SUNDERLAND and REGINALD LAFAYETTE, as Commissioners of the WESTCHESETER COUNTY BOARD OF ELECTIONS, ERIN MALLOY, as candidate for Mayor for the Village of Irvington, and THE BOARD OF TRUSTEES OF THE VILLAGE OF IRVINGTON, Respondents.

Petitioner **DENNIS P. FLOOD**, by his attorney, JOHN CIAMPOLI, ESQ., as and for his petition, respectfully alleges upon information and belief, that:

1. Petitioner is the Mayor of the Village of Irvington, New York (the "Village") and a candidate for Mayor in the 2005 Village Election which took place on March 15, 2005 ("Election Day").

- 2. Respondent LAWRENCE SCHOPFER is the Village Clerk of the Village of Irvington, who is charged with conducting the canvass and certifying the results of village election in Irvington held on March 15, 2005.
- 3. Respondents SUNDERLAND AND LAFAYETTE are the commissioners of the Board of Election in Westchester County, which is responsible for conducting the recanvass of the village election held March 15, 2005.
- 4. The BOARD OF TRUSTEES OF THE VILLAGE OF IRVINGTON is charged with conducting a selection of the Mayor of Irvington by lot in the event that there is a tie-vote.
- 5. This is a plenary proceeding seeking a declaratory judgment with regard to the result of the Village Election and an order for a new election to be conducted. This petition seeks an order (a) that the voter signature ledgers, poll worker lists, absentee ballot envelopes, absentee ballot lists, absentee ballot applications, absentee ballots themselves, affidavit ballots, if any, write-in votes, if any, and any other lists or documents showing the votes cast on Election Day and qualification of voters be made available for inspection, copying, and objection as appropriate, by petitioner, the other candidate for Mayor, and the Court and (b) that a new election (or "run off election") be conducted in the Village of Irvington, New York as expeditiously as possible for the position of Mayor, due to the instances of voting irregularity and potential fraud which occurred on Election Day, and at the subsequent recanvassing, directly affecting the outcome of this election, and thus rendering the canvass of returns to be erroneous, and the outcome of the election for the position of Mayor uncertain and unascertainable.
- 6. It is petitioner's understanding that under the N.Y. Election Law 15-126, in the event that each candidate receives an equal number of votes (which may be the case here, but

because of voting irregularity and possible fraud, such results are uncertain), the Board of Trustees for the Village shall determine by lot which of such persons shall be elected. In essence, a coin flip will determine the outcome of an important electoral position.

- 7. This choosing of a Mayor "by lot" is a draconian measure that is unwarranted and goes against the very fabric of the electoral process, particularly when the result of the election (an alleged "tie-vote") is in question. A run-off election for the position of mayor is the only way to uphold the democratic electoral process and not disenfranchise the residents of the Village of Irvington. As the current Mayor and citizen of the Village, petitioner has the responsibility to ensure the integrity of every election in the Village.
- 8. Moreover this Court, in contrast to situations involving General Elections, has the power to review the facts and circumstances of this Village election, and, where the result is affected by irregularity, "make such order as justice may require", Election Law Section 15- 138.

Introduction

- 9. Petitioner has been the Mayor of the Village since 1994. During his tenure as Mayor, petitioner been involved in both contested and uncontested elections.
- 10. For this election, petitioner ran on the Republican and Irvington Good Government party lines. The challenger for mayor, Respondent **ERIN MALLOY**, ran on the Democratic and Irvington Village Party lines.

11. On Election Day, in addition to the mayoral seat, there were also two trustee positions that were contested. At issue here is solely the mayoral seat, and PETITIONER does not seek any stay of the certification of the results of any election except that of Mayor of the Village of Irvington.

Election Day – PETITIONER Wins By One Vote

- 12. The polls closed at 9:00 p.m. on Election Day. The votes were canvassed shortly thereafter by the inspectors of the election.
- 13. Later that Election night, the Village Clerk announced the returns of the inspectors of election. The results of the election revealed that out of the approximately 1,690 votes cast for the position of Mayor by both machine and absentee ballot, petitioner **DENNIS FLOOD** won the election by one vote. The totals on Election night were 845 votes for **FLOOD**, 844 for **MALLOY**.
- 14. On the morning following the Election, the respondent, MALLOY, upon information and belief, filed a written request for a recanvass of the vote.

<u>The Recanvass of the Vote – 11:00 a.m. March 18, 2005 – PETITIONER Allegedly Loses</u> <u>By One Vote</u>

- 15. On Friday, March 18, 2005, the Westchester County Board of Elections conducted the recanvass ("Board of Elections").
- 16. Upon information and belief, at the recanvass, after the machine and absentee ballots were recounted by the Westchester County Board of Elections, PETITIONER allegedly

lost the Election by one vote. Upon information and belief, there was a change in the machine vote in PETITIONER'S favor by one vote and a change in the absentee ballot vote against PETITIONER by three votes.

- 17. This swing in the absentee ballot count represents approximately 5% of the total absentee ballots cast (3 out of 60 absentee ballots), thus raising serious questions of the validity and count of the absentee ballots. Nonetheless, as a result of the recanvass by the Board of Elections, both machine and absentee ballot count changed.
- 18. With respect to absentee ballots, there are two (2) ballots that were not opened on Election night or at the recanvass by the Board of Elections.
- 19. Upon information and belief, one of those absentee ballots was cast by a registered voter of the Village. However, due to an error by the Office of the Village Clerk that ballot was not delivered to the proper election district the night of the Election, and was returned to the Village Clerk unopened. The other absentee ballot, upon information and belief, was from someone not registered to vote in any of the Village voting districts.

Opening of the Absentee Ballot of the Registered Voter – 6:30 p.m. March 18, 2005 – <u>Alleged Tie Vote</u>

- 20. Later in the afternoon of March 18, 2005 (after the recanvass by the Board of Elections), both candidates for Mayor consented, in writing, to opening the absentee ballot of the registered voter whose ballot was mistakenly sent to the wrong election district on the day of election.
- 21. At approximately 6:30 p.m. in the evening of March 18, 2005, at Village Hall, the Village Clerk, with the written consent of both candidates, opened the absentee ballot of the

registered voter. That vote was in **PETITIONER'S** favor. Thus, upon information and belief, the results of the Election are allegedly tied 847 to 847 votes, which totals represent the current proclaimation of the village clerk.

22. The recanvass by the Board of Elections on the morning of March 18, 2005, did not include this absentee ballot which was opened at 6:30 p.m. later that evening. Upon information and belief, the Westchester Board of Elections has yet to recanvass the said ballot.

A New / Run-Off Election For Mayor Is Warranted

- 23. A new election or a run-off election is warranted in this unique situation because of the irregularities in the electoral process from Election Day through the opening of the absentee ballot on March 18, 2005. The irregularities that have come to light, and which this Court must examine include but are not limited to:
 - a) Upon information and belief, there are individuals who no longer reside in the Village, but voted in this Election nonetheless. A review of the voter signature ledgers, absentee ballot applications, absentee ballots, absentee ballot envelopes, affidavit ballots, and other documents is necessary and will confirm this.
 - b) Upon information and belief, individuals applied for and received absentee ballots who were not entitled to them (applications for absentee ballots were not available for inspection at the recanvass).
 - c) Upon information and belief, individuals voted by absentee ballot who were not permitted to do so by law.

- d) Upon information and belief, voting districts and/or polling sites had changed since the November, 2004 election, which created confusion among voters as to where they were to vote.
- e) Upon information and belief, certain qualified voters where not able to vote based on the confusion created by the changed polling sites.
- f) A voting machine jammed at the voting district at the Village Library.

 Individuals who wanted to vote could not, and upon information and belief,
 qualified voters left the polling place and may not have voted.
- g) Upon information and belief, there was at least one absentee ballot opened and counted, but the envelope was not signed as required by law.
- h) Upon information and belief, it appears that someone cast an absentee ballot who is <u>not</u> a registered voter of the Village.
- 24. While I am aware of the fact that in the event of a tie vote, the Board of Trustees shall determine the next Mayor by lot, such a procedure is premature if it cannot be determined whether, in fact, there is a tie to begin with.
 - 25. Given what has transpired in this Election, the alleged "tie-vote" is not without serious doubt.
 - 26. Moreover, the number of irregularities when set against the margin separating the two candidates (zero votes), upon information and belief, satisfies any mathematical test recognized by the Courts of this State for awarding a new election.

- 27. The only way to ensure that the residents of the Village of Irvington are not disenfranchised, or given a false result for this election, is for the Court to conduct the appropriate review of the voter signature ledgers, absentee ballot envelopes, absentee ballot lists, and any other documentation to determine whether the electoral process was compromised. Upon a finding that the result of this election is in doubt, or can not be determined, then the Court should order a new election, see <u>Felice v. Berger</u>, 182 Ad2d 795 (2nd Dept., 1992).
- 28. While the flip of coin may be appropriate in to begin a football game, even in that setting, it is not outcome determinative, and it runs afoul of the basic integrity of the democratic process. The only way the will of people can be determined is to have a new or a run-off election. Blind luck should not determine the outcome of an election, particularly when there are potential serious election irregularities and possible fraud.

WHEREFORE, your Petitioner respectfully requests that this Court:

ORDER the immediate stay of the certification of the results of the election for Mayor of the Village of Irvington against respondents WESTCHESTER COUNTY BOARD OF ELECTION and LAWRENCE SCHOPFER, in his capacity as Village Clerk of the Village of Irvington; and

ORDER that the BOARD OF TRUSTEES OF THE VILLAGE OF IRVINGTON is enjoined from taking any action to decide the outcome of the election for Mayor of the Village of Irvington; and

ORDER that the voter signature ledgers, poll worker lists, absentee ballot envelopes,

absentee ballot lists, absentee ballot applications, absentee ballots themselves, affidavit ballots, if any, write-in votes, if any, and any other lists or documents showing the votes cast in the Village of Irvington on Election Day and qualification of voters be secured and made available for inspection and copying by petitioner, the other candidate for Mayor, and provided to the Court; and

ORDER that declaratory judgment be entered in Petitioner's favour, and that a new election or a run-off election be conducted in the Village of Irvington, New York as expeditiously as possible for the position of Mayor, together with such other and further relief as the Court may deem just and proper.

JOHN CIAMPOLI, ESQ.

Attorney for Petitioner

99 Washington Avenue, Suite 702

Albany, New York 12210

518 436 3865

ATTORNEY'S VERIFICATION

STATE OF NEW YORK)
COUNTY OF ALBANY) s.ss:

JOHN CIAMPOLI, an attorney duly admitted to the practice of law before the Courts of the State of New York, does hereby affirm under the penalties of perjury:

- 1. He is the attorney for the petitioner (s) in this action.
- 2. He has personally reviewed the contents of this document with his client(s), and their campaign workers, and upon the conclusion of said review as to the facts alleged therein, believes same to be true.
- 3. He has personally reviewed the copies of election returns from each of the relevant the Boards of Elections and or Village, together with the other ancillary papers thereto, contacted each of the respondent boards, and upon the conclusion of the said review, believes the within allegations to be true, to his personal knowledge.
- 4. This affirmation is being used in lieu of a verification pursuant to the provisions of the CPLR and applicable case law, due to the fact that time is of the essence and that petitioner and his counsel are in different counties. Counsel having offices in the County of Albany and Petitioner(s) residing in the County of Westchester.

DATED: ALBANY, NEW YORK March 21, 2005

John Ciampoli, Esq.

99 Washington Avenue, Suite 702

Albany, New York 12210

518 - 436 - 3865

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF WESTCHESTER						
In the Matter of the Application of the Honorable DENNIS P. FLOOD, individually, and as Mayor, and as candidate for Mayor of the Village of Irvington,	X : : : : : Index No.					
Petitioner,	:					
-against-	. : •					
LAWRENCE SCHOPFER, in his capacity as Village Clerk of the Village of Irvington, CAROLEE SUNDERLAND and REGINALD LAFAYETTE, as Commissioners of the WESTCHESETER COUNTY BOARD OF ELECTIONS, ERIN MALLOY, as candidate for Mayor for the Village of Irvington, and THE BOARD OF TRUSTEES OF THE VILLAGE OF IRVINGTON,						
	:					
	; v					
ORDER TO SH A I AND VE	IOW CAUSE RIFIED PETITION					
*.						
JOHN CIAMPOLI, ESQ. ATTORNEY FOR PLAINTIFF 99 WASHINGTON AVE ALBANY, NY 12210 (518) 436-3865						
To	ervice of a copy of the within is hereby admitted.					
Г	Dated:					
Attorney(s) for						

WESTCHESTER COUNTY BOARD OF ELECTIONS

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25 QUARROPAS STREET WHITE PLAINS, NEW YORK [10601 (914) 995-5700



CAROLEE C. SUNDERLAND Commissioner Fax 914-995-3190 **MELISSA J. NACERINO Deputy Commissioner**

Mar 28 05 02:44p

25 Quarropas Street White Plains, NY 10601 914-995-5700 www.westchestergov.com/boe REGINALD A. LAFAYETTE Commissioner Fax 914-995-7753 JEANNIE L. PALAZOLA **Deputy Commissioner**

Mr. Lawrence Schopfer Irvington Village Clerk 85 Main Street Irvington, New York 10533 March 28, MAR 2 8 2005 VILLAGE OF IRVINGTON. N.Y.

9953190

Dear Mr. Schofper:

At the request of your office, the Board of Elections conducted a second re-canvass for the Irvington Village Election held on Tuesday, March 15th 2005. At such time, two additional ballots were re-canvassed by this Board. Please accept this letter as an amendment to the Board's original re-canvass results.

Subsequent to a re-canvass of two additional ballots cast in the Irvington Village Election, the totals in the Mayoral race were as follows:

Dennis Flood:

847

Erin Malloy:

848

Attached hereto is a revised breakdown by election district of machine and Absentee ballot results.

This letter concludes the re-canvass conducted by the Board of Elections. If you have any questions or require further assistance, please do not hesitate to contact us.

Sincerely,

JEANNIE L. PALAZOLA

Deputy-Commissioner

MELISSA J. NACERINO Deputy-Commissioner

Received Time Mar. 28. 3:36PM

Village of Irvington Amended Re-Canvass 3/28/05

Mayor -	E.D. 8						
MACHIN		AB	Total				
1A	142	9	151			,	
1B	115	4	119				
1C	29	2	31				
1D	16	. 0	16			,	
-:				·			
Trustee	e (vote f	or two)	- E.D. 8				
MACHIN		AB	Total	MACHIN	E	AB.	Total
2A	125	10	135	3A	134	10	144
2B	142	3	145				•
2C	33	3	36	3C	48	2	50
2D	22	0	22				
				·			·
Mayor -	E.D. 9						
MACHIN		AB	Total				
1A	139	6	145				
1B	129	6	135				
1C	16	0	16				
1D	11	0	11				
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Trustee	e (vote f	or two)	= E.D. 9				
MACHIN		AB	Total	MACHIN	E	AB	Total
2A	125	6	131	3A	137	6	143
2B	147	6	153				·
2C	24	0	24	3C	39	2	41
2D	15	0	15				
					ongressa Signary	ACCUMENTATION OF THE PROPERTY	
Mayor -	E.D. 10						
MACHIN	E	AB	Total				
1A	140	4	144				
1B	119	3	122				
1C	12	0	12				
1D	15	0	15				
							e i i i i i i i i i i i i i i i i i i i
			- E.D. 10				
MACHIN		AB	Total	MACHIN		AB	Total
2A	123	4	127	3A	127	4	131
2B	136	3	139		277		27
2C	21	0	21 17	3C	37	0	37
2D	17	0	1/				
1/2						- 5 m	l Parista de la compa
	ED. 11						
MACHIN		AB	Total				
1A	28	2	30				
1B	61	5	66 5				<u> </u>
1C 1D	5 7	0	7				
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Village of Irvington Amended Re-Canvass 3/28/05

Truste	e (vote i	for two)	- E.D. 1				
MACHIN		AB	Total	The state of the s	MACHINE		T_4_1
2A	-25	2	27	3A	38	AB 2	Total
2B	66	5	71	+ +	30	4	40
2C	9	0	9	3C	16	1 1	17
2D .	10	1 0	10		+ 10	 	1 1/
			1 10				i i
Mayor -	E.D. 60			STATE OF THE STATE OF			
MACHIN							
		AB	Total				
1A	82	4	86			<u> </u>	
1B 1C	124	1	125			<u> </u>	
1D	6	0	6				
10	7	0	7		<u> </u>		
					Debag de Sorte par en la como de con-		and the second second second
			- E.D. 6	TECH S A 1734 TECH SULL, TECH SERVICE S & F			
MACHIN		AB	Total	MACHIN	VE	AB	Total
2A	78	3	81	3A	90	4	94
2B	140	3	143				
2C	8	0	8	3C	. 38	0	38
2D	11	0	11				
Mayor -	E.D. 79						
MACHIN		AB	Total				i kana da arang da kana da Jawasa ka Kana da kana da kana da Jawasa ya Kanada kana da kana da kanada kanada kanada kanada kanada kanada kanada kan Kanada kanada kanad
1A	145	9	154		<u> </u>		
1B	164	5	169				
1C	14	1	15				
1D	17	1	18		<u> </u>		
					 		
Trustee	(vote f	or fwol	- E.D. 79				
			described to the second second				
MACHIN		AB	Total	MACHIN		AB	Total
2A	132	8	140	3A	137	11	148
2B	189	6	195				
2C 2D	22	0	22	3C	57	2	59
20	19	2	21				
N 0				Medalise and Colonia Colo			carrier and the commence for
Mayor -							
MACHINI	E	AB	Total				
1A	50	0	50				
1B	34	0	34				
1C	2	0	2				
1D	4	0	4				
Trustee	(vote fo	or two).	- E.D. 81				
MACHINE		AB	Total	MACHIN		ΛP	Total
2A	44	0	44			AB	Total
2B	35	0	35	3A	57	0 .	57
2C	2	0	2	3C	17		
2D	7	0	7	30	1/	0	17
				1			